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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KYLE SORENSEN,

Defendant and Appellant.

A138863

(Sonoma County
Super. Ct. No. SRC631427)

I. INTRODUCTION

In March 2013, appellant pled guilty in Sonoma County Superior Court to a charge of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and admitted a great bodily injury enhancement (Pen. Code, § 12022.7, subd. (a)). He now appeals and, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, asks this court to review the record in the court below and determine if there are any issues deserving of further briefing and then review by this court. We have done so, but have found no such issues and hence affirm the judgment of the trial court, including the sentence imposed.

II. FACTUAL AND PROCEDURAL BACKGROUND

During the early morning hours of March 9, 2013,¹ Rohnert Park police officers were dispatched to an apartment on Civic Center Drive in that city due to a report of an assault with a machete that had occurred there. Their investigation revealed that, earlier that evening, two of the residents of the apartment, appellant, then age 21, and Aaron

¹ All further dates noted are in 2013.

Randall, were “drinking straight vodka” which apparently led appellant to display “violent tendencies.” Per appellant’s later statements to the police, he had begun drinking alcohol, apparently mostly vodka, between 1:00 p.m. and 2:00 p.m. on the previous afternoon, March 8.

In the early morning hours of March 9, around 3:00 a.m., appellant was wrestling “ninja style” with his other roommate, the victim in the case, Jesse Namoa-Ford. At one point during this wrestling, Namoa-Ford apparently got a bit of an upper hand on appellant, “pinning him to the ground.” But appellant then got free and told the victim that he was going to get a machete that he kept in his room, a machete that was reportedly “two feet in length.” Namoa-Ford tried to keep the door to appellant’s room shut; appellant appeared and sounded “very angry and attempted to open his bedroom door,” but Namoa-Ford kept it shut for a while longer. After a while, he let go of the door and appellant “exited the room and immediately slashed” Namoa-Ford’s face with the machete. The latter then fell to the floor and raised his hands and legs to try to protect himself. Appellant then hit Namoa-Ford with the machete on both his arms and legs until Randall awoke from sleep in his room, came into the room where the other two were and was able to stop appellant from striking Namoa-Ford further.

Namoa-Ford sustained extensive lacerations to both the left side of his face, his right hand, and right leg. That leg had six lacerations caused by the machete, all of them reaching down to either his muscle or bone. In addition, his right kneecap was fractured.

Namoa-Ford underwent surgery that night; his right thumb, which had been 85 percent amputated, was reattached and realigned with a pin. Additionally, on March 13, his left eye had to be removed because “it was transected by the machete stroke and [he] retained no vision or light perception” in it.

On March 12, the Sonoma County District Attorney filed a felony complaint against appellant charging him with assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1). On the same date, appellant was arraigned and entered a plea of not guilty.

On March 28, the prosecutor verbally amended the complaint to add a great bodily injury enhancement pursuant to Penal Code section 12022.7, subdivision (a). Appellant then pled guilty to the charge and admitted the enhancement just added to the complaint. His counsel was present in court for that plea and, after her explanation of it to him, appellant executed a standard written waiver form regarding his plea.

On May 21, the Sonoma County Public Defender's office filed an application for probation for appellant. Although counsel agreed that the court could and should impose a lengthy prison term on appellant, she also noted that the Jericho Project, a "State Licensed Residential Drug and Alcohol Program for men" in Brisbane, San Mateo County, had accepted appellant into its two-year residential treatment program, and urged the court to grant him probation on condition of completion of that program.

Two days later, on May 23, the Sonoma County Probation Department filed a presentence report to the court. It recommended that probation be denied to appellant because his "actions were particularly brutal and have left the victim with lifelong injuries, specifically the loss of an eye," and that the facts of the case were "much too serious" for anything less than a state prison term sentence. It recommended the midterm because, it contended, factors in aggravation balanced those in mitigation.

The same day, May 23, the court held a sentencing hearing. It denied the public defender's request for probation for appellant because, it stated, of the "horrific nature of the injuries" to the victim and because it believed appellant "does present a danger to society." It thus stated that it could not "see any way other than a prison sentence in this case." It agreed with the probation department that the aggravating and mitigating factors were balanced, and sentenced appellant to three years on the assault count and an additional three years on the great bodily injury enhancement, for a total of six years in state prison. It granted appellant a total of 87 days of presentence credits.

Appellant filed a timely notice of appeal on May 30.

III. DISCUSSION

Because appellant did not seek much less secure a certificate of probable cause, pursuant to Penal Code section 1237.5 and rule 8.304(b) of the California Rules of Court,

the only issues reviewable by us on appeal are those which arose “after entry of the plea and do not affect the plea’s validity.” (Cal. Rules of Court, rule 8.304(b)(4)(B).) In this case, such would include the trial court’s decision to deny appellant probation, the mid-term sentence it imposed, and its presentence decision to deny a California Department of Corrections study and diagnostic report pursuant to Penal Code section 1203.03. A denial of such a study is reviewed for abuse of discretion (see *People v. McNabb* (1991) 228 Cal.App.3d 462, 471) as, of course, are most of a trial court’s sentencing decisions. (See 3 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Punishment, § 638, pp. 1037-1038.)

Particularly in view of (1) the severe injuries inflicted by appellant on the victim, Namoa-Ford, including the loss of an eye, (2) the fact, as noted by the probation office, that appellant was and is “statutorily limited from probation consideration under” Penal Code section 1203, subdivision (e)(2), because of the charge against him to which he had pled guilty, (3) that office’s thorough analysis of the aggravating and mitigating factors, we find no abuse of discretion in the trial court’s rulings denying appellant probation or the length of the sentence it imposed. We also find no error in the trial court’s computation of the presentence credits to which appellant was entitled.

IV. DISPOSITION

The judgment of the superior court, including the sentence imposed, is affirmed.

Haerle, Acting P.J.

We concur:

Richman, J.

Brick, J.*

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.